

their programs. Besides DBS and wireless cable, the programmers have access to consumers through a wired network into their home through the incumbent cable operator's coax network. Since there is already a pipe into the home for video services, LEC provision of video services does not require structural separation. On the other hand, if the FCC imposes such a requirement upon telephone companies which offer video services, it must also impose it on cable companies which offer telephony services, to guard against "cross-subsidization" and "anti-competitive behavior" by the cable company.

The Commission will amass a substantial record in the *Computer III* remand proceedings shortly (CC Docket No. 95-20). For now, however, the FCC need only reexamine the evidence introduced in the second *CI-III* remand proceeding (CC Docket No. 90-623). There, it wisely held that the costs of separation, which include the probable death of enhanced services generally, outweigh the benefits of these services to consumers. SBC would have to rethink entry into the video services market if structural separation were mandated. The resulting costs would have a profound impact on SBC's video services. Structural separation certainly would inhibit SBC's ability to be fully responsive to customers' desire for choice and convenience. It would be unwise for the FCC to impose this stricture and we urge against it.

V. **THE FCC CANNOT AND SHOULD NOT GRANT A WAIVER OF THE TELCO/CABLE CROSS OWNERSHIP RESTRICTION FOR THE ENTIRE LEC INDUSTRY PURSUANT TO THE AUTHORITY OF AN UNCONSTITUTIONAL STATUTE.**

The Commission tentatively concludes that it should construe all of the suggested conditions upon LEC provision of video programming as a conditional waiver of 47

U.S.C. § 533 pursuant to the Commission's power under subparagraph (b)(4) to grant "waivers." This outlandish conclusion is urged because of the general rule that statutes should be construed whenever possible so as to avoid unconstitutionality,

Two rather obvious conclusions are immediately apparent. First, it is impossible for any waiver authority to be granted to the FCC pursuant to a statute which is itself unconstitutional. Since the enabling legislation for the waiver is invalid, no valid waiver can be granted. Second, a waiver of a statute for the entire industry to which it applies is not a waiver. It is a ruling by the Commission that the statute is so flawed that application no longer serves the public interest. However, as the District of Columbia Court of Appeals has often urged the Commission to observe, the FCC does not choose the laws it is given to enforce and it cannot pretend, even through clever interpretation of legislation, that it holds powers not granted by Congress. *See, e.g., MCI v. FCC*, 765 F.2d 1186, 1193 (D.C. Cir. 1985). If Congress mandated that telephone companies cannot become cable operators in-region, it will take more than a waiver by the FCC to change that fact.⁶⁶ This transparent effort by the government to avoid the humiliation of universal defeat in court should be abandoned as the subterfuge for due process that it is.

⁶⁶Alternatively, the proposed waiver may be a violation of the various injunctions against the United States restraining enforcement of Section 533. After all, the statute must surely be in danger of being "applied" before its application can be "waived." But since the Commission is forbidden to apply the statute to five BOCs, as to them at least no waiver may be granted. The remaining companies have not requested such a waiver and the Commission would be an unwelcome volunteer in the federal litigation should it grant one.

VI. CONCLUSION

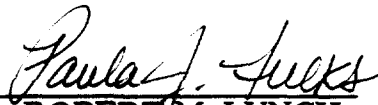
The FCC has made great progress in recent months in moving the development of video dialtone procedures expeditiously. The Commission can be justifiably proud at the fact that it has brought a serious backlog of VDT applications nearly current, that it is generally keeping abreast of new applications and that it has applied a great deal of thought to the questions raised by industry and legal developments. Regrettably, however, much of this progress is likely to become wasted effort, because the very premise supporting VDT is fundamentally flawed. The statute which inspired the Commission to invent VDT is gone, and with it all the rationale for a common carrier alternative designed only to permit an end run around it.

SBC would have preferred that the FCC had taken the opportunity presented by the string of cases invalidating the cross-ownership restriction to reinvent the process *ab initio*. Since it has not, however, the order which results from this proceeding must be exceedingly careful to delineate which of the two models it follows, the cable or the VDT model, and then must equally carefully analyze its statutory authority for each provision of the regulation it applies. Properly performed, this type of analysis should lead the FCC to clean up the VDT model to give additional flexibility to the carriers (and their programmer-customers, affiliated or not) and at the same time preserve the cable model from all intrusions of Title II regulation.

Ideally, the end result of this undertaking will move the Commission a little closer to the realization that it fundamentally is in the business of regulating services, not carriers, and that very little regulation of video service will be necessary once LECs enter the market.

Respectfully submitted,

Southwestern Bell Corporation

By: 
ROBERT M. LYNCH
PAULA J. FULKS

175 E. Houston
Room 1212
San Antonio, TX 78217
(210) 351-3424

ATTORNEYS FOR
SOUTHWESTERN BELL CORPORATION

March 21, 1995

CABLE NETWORK OWNERSHIP

Network	Owner	% ownership	Network	Owner	% ownership
AMC	Cablevision Systems	75.0%	Encore	Tele-Communications, Inc.	90.0%
	NBC	25.0		JJS Communications	10.0
A&E	Hearst	37.5	E!	Time Warner	48.3
	Capital Cities/ABC	37.5		Comcast	10.3
	NBC	25.0		Continental Cablevision	10.3
Am. Talking	NBC	100.0		Cox	10.3
BET	Robert Johnson	55.2		NewChannels	10.3
	Tele-Communications, Inc.	21.4		Tele-Communications, Inc.	10.3
	Time Warner	17.8	ESPN	Capital Cities/ABC	80.0
	Stockholders under 5%	5.6		Hearst	20.0
The Box	Starnet CEA	56.3	ESPN 2	Capital Cities/ABC	80.0
	Public	26.7		Hearst	20.0
	Island Trading Co.	11.5	FAM	Public	47.7
	Tele-Communications, Inc.	5.5		Tele-Communications, Inc.	18.1
Bravo	Cablevision Systems	50.0		Regent University	10.3
	NBC	50.0		CBN	9.9
Cartoon	Turner Broadcasting (a)	100.0		Class A - Trust	6.4
CHC	Cable Health TV	90.0		Class A - CEO	3.9
	Tele-Communications, Inc.	5.0		Intl. Family Ent. management	3.7
	Reebok	5.0	Flix	Viacom	100.0
Cinemax	Time Warner	100.0	FX	Fox Broadcasting	100.0
CMT	Gaylord Entertainment	67.0	HBO	Time Warner	100.0
	Group W	33.0	Headline News	Turner Broadcasting (a)	100.0
CNBC	NBC	100.0	HSN	Tele-Communications, Inc.	79.2
CNN	Turner Broadcasting (a)	100.0		FMR Corp.	10.5
Comedy Central	Time Warner	50.0		Public	9.2
CNN	Viacom	50.0		Officers/Directors (b)	1.1
Court TV	Tele-Communications, Inc.	33.3	International	ICN Entertainment	50.0
	Time Warner	33.3		Encore	50.0
	Cablevision Systems	16.7	Lifetime	Hearst	50.0
	NBC	16.7		Capital Cities/ABC	50.0
C-SPAN	Cable operator-supported/nonprofit	---	Mind Extension	Jones Education Network	51.0
Discovery	Tele-Communications, Inc.	49.0		Jones International	25.0
	Cox	24.0		Jones Spacelink	13.0
	NewChannels	24.0		Glenn Jones	11.0
	John Hendricks	3.0	Movie Channel	Viacom	100.0
Disney	Walt Disney Co.	100.0	MTV	Viacom	100.0

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(continued on next page)

CERTIFICATE OF SERVICE

I, Martha R. Kiely, hereby certify that copies of Southwestern Bell Corporation's Initial Comments have been served by first class United States mail, postage prepaid, on the parties listed on the attached.


Martha R. Kiely

March 21, 1995

CATV Affiliated Programmers as a Percent of the Industry

AFFILIATED/ UNAFFILIATED	FILM INDUSTRY COMPANY NAME	1991 FILM REVENUE	% OF THEIR COMPANY
A	TIME WARNER (Warner Brothers)	3,455.0	25.9
A	PARAMOUNT COMMUNICATIONS	2,657.4	62.3
A	TURNER BROADCASTING	258.9	15.8
A	VIACOM	248.3	13.2
A	MULTIMEDIA	129.1	22.4
A	THAMES ENTERTAINMENT (Cox)	53.9	100
	TOTAL AFFILIATED	6,802.6	
	PERCENT OF TOTAL INDUSTRY	37.68%	
U	SONY	3,314.9	46.3
U	DISNEY	3,115.2	100
U	NEWS CORP	1,858.0	37.8
U	MGM	729.5	100
U	CARIOCO PICTURES	560.7	100
U	KING WORLD	503.2	100
U	SPELLING	258.5	100
U	NEW LINE CINEMA	227.0	100
U	ORION PICTURES	222.3	100
U	REPUBLIC PICTURES	88.3	100
U	SAMUAL GOLDWYN	72.2	100
U	IMAGE ENTERTAINMENT	60.4	100
U	RHI ENTERTAINMENT	56.5	100
U	DICK CLARK	34.1	100
U	PLAYBOY ENTERPRISES	32.5	17.6
U	COMMUNICATIONS & ENTERTAINMENT	29.9	100
U	KUSHNER-LOCKE	24.1	100
U	IMAGINE FILM	21.2	100
U	KINGS ROAD ENTERTAINMENT	20.4	100
U	NORTHWEST TELEPRODUCTIONS	13.8	100
U	PRODUCERS ENTERTAINMENT GROUP	4.1	100
U	LANCIT MEDIA	2.8	100
U	CROWLEY FINANCIAL	1.3	100
	TOTAL UNAFFILIATED	11,250.9	
	PERCENT OF TOTAL INDUSTRY	62.32%	
	TOTAL FILMED ENTERTAINMENT	18,053.5	

NOTE: Revenues in millions

SOURCE: Veronis, Suhler & Associates Inc., Communications Industry Report - 1991

William P. Barr,
Attorney General
U.S. Department of Justice
10th & Constitution Ave., N.W.
Room 4111
Washington, DC 20530

David L. Nace
Lukas, McGowan, Nace
and Gutierrez
1819 H Street, N.W.
7th Floor
Washington, DC 20006

Catherine G. O'Sullivan
U.S. Department of Justice
10th & Pennsylvania Ave., N.W.
Room 3224
Washington, DC 20530

Robert L. Pettit
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Elizabeth A. Kusibab
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

John E. Ingle
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, DC 20554

Francine J. Berry
Mark C. Rosenblum
American Telephone and
Telegraph Company
295 North Maple Avenue
Basking Ridge, NJ 07920

Aaron I. Fleischman
Aurthur H. Harding
Fleischman and Walsh
1400 16th Street, N.W.
Suite 600
Washington, DC 20036

Floyd S. Keene
Michael S. Pabian
Ameritech Operating Companies
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60196

John R. Feore, Jr.
Werner K. Hartenberger
Dow, Lohnes and Albertson
1255 23rd Street, N.W.
Suite 500
Washington, DC 20037

M. Robert Sutherland
BellSouth Corporation
4300 Southern Bell Center
675 West Peachtree St., N.W.
Atlanta, GA 30375

James R. Young
Bell Atlantic Telephone
Companies
1710 H Street, N.W.
Washington, DC 20006

Samuel Loudenslager
Arkansas PSC
1000 Center Street
Little Rock, AK 72203

Thomas P. Cohan
Office of Cable Communications
Boston City Hall
Boston, MA 02201

Joseph W. Waz, Jr.
Wexler, Reynolds, Harrison
and Schule, Inc.
1317 F Street, N.W.
Suite 600
Washington, DC 20006

Ian D. Volner
Ronald A. Siegel
Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, DC 20036

Janice E. Kerr
J. Calvin Simpson
California PSC
505 Van Ness Avenue
San Francisco, CA 94102

Frank DiGiammarino
CT&CAC of Lexington
1625 Massachusetts Avenue
Lexington, MA 02173

Sally Goodgold
Sidney W. Dean, Jr.
City Club of New York
33 West 42nd Street
New York, NY 10036

Stephen R. Effros
CATA
P.O. Box 1005
Fairfax, VA 22030

James F. Meehan
Bill Kowalski
Connecticut Office of Consumer
Counsel
136 Main Street, Suite 501
New Britain, CT 06051

Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo
701 Pennsylvania Ave., N.W.
9th Floor
Washington, DC 20004

David C. Olson
Thomas E. Taylor
Frost and Jacobs
2500 Central Trust Center
201 E. Fifth Street
Cincinnati, OH 45202

Michael A. Morris
CATA
P.O. Box 11080
4341 Piedmont Avenue
Oakland, CA 94611

Paul K. Taff
Connecticut Broadcasters
Association
101 Tall Timbers Lane
Glastonbury, CT 06033

Theodore D. Frank
Arent, Fox, Kintner, Plotkin
and Kahn
1050 Connecticut Ave., N.W.
Washington, DC 20036

Gene Kimmelman
Consumer Federation of
America
1424 16th Street, N.W.
Washington, DC 20016

Linda T. Muir
Lawrence P. Keller
Contel
245 Perimeter Center Parkway
P.O. Box 105194
Atlanta, GA 30348

Angela J. Campbell
Citizens Communications Center
Georgetown University Law
600 New Jersey Ave., N.W.
Washington, DC 20001

Allan D. Cors
Retail Office Building
35 West Market Street
MPRO-31
Corning, NY 14831

Paul Glist
Cole, Raywid and Braverman
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, DC 20006

Norman M. Sinel
Arnold and Porter
1200 New Hampshire Ave., N.W.
Washington, DC 20036

Gardner F. Gillespie
Hogan and Hartson
555 13th Street, N.W.
Washington, DC 20004

Howard C. Davenport
PSC of the District of Columbia
450 Fifth Street, N.W., 8th Fl.
Washington, DC 20001

Joseph Van Eaton
National Federation of Local
Cable programmers Miami Valley
Cnsl.-Miller & Holbrooke
1225 Nineteenth St., N.W.
Suite 400
Washington, DC 20036

Brian R. Moir
Fisher, Wayland, Cooper
and Leader
Suite 800
1255 23rd Street, N.W.
Washington, DC 20037-1125

Gregory J. Krasovsky
Florida PSC
101 East Gaines Street
Tallahassee, FL 32399-0861

William J. Buckner
Georgia PSC
244 Washington Street, S.W.
Atlanta, GA 30334

Gail L. Polivy
GTE Telephone Companies
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Mark A. Jamison
Susan Allender
Iowa State Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Wayne Kern
Linda Williams
Heritage Communications, Inc.
2195 Ingersoll Avenue
Des Moines, IA 50312

Nancy Thompson
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036

Veronica M. Ahern
Nixon, Hargrave, Devans
and Doyle
One Thomas Circle
Suite 800
Washington, DC 20005

Clinton Hanson
Cooperative Telephone Company
235 1st Avenue East
P.O. Box 147
Groton, SD 57445-0147

Robert G. Jones
City of Lee's Summit
207 S.W. Market
Lee's Summit, MO 64063

Nicholas P. Miller
Joseph Van Eaton
City of St. Louis, Missouri
Miller & Holbrooke
1225 Nineteenth St., N.W. Ste. 400
Washington, DC 20036

Pasty Judd
Kentucky Cable TV Association
P.O. Box 415
Burkeville, KY 42717

Donald J. Elardo
MCI Telecommunications
Corporation
1801 Pennsylvania Ave., N.W.
Washington, DC 20006

Keith N. Ware
Emery County Farmers Union
Telephone Association, Inc.
P.O. Box 629
150 South Main
Orangeville, UT 84537-0629

Marilyn Moore
Michigan PSC
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

J. Kent Jerome
Iowa Telephone Association
1601 22nd Street
Suite 209
West Des Moines, IA 50265

Michael A. Jacobson
Huntel Systems, Inc. and
Blair Telephone Company
P.O. Box 400
Blair, NE 68008-0400

Ellen S. Deutsch
Citizen Utilities Company
of California
1035 Placer Street
Redding, CA 96001

Kathleen Sheran
Mankato/NMCCAB
202 East Jackson
Box 3368
Mankato, MN 56001

Herman W. Land
12071 Caminito Corriente
San Diego, CA 92128

Gary L. Lieber
Schmeltzer, Aptaker and Shepard
2600 Virginia Ave., N.W.
Suite 1000
Washington, DC 20036

Allan E. Anderson
Marshall Cable TV Commission
P.O. Box 310
Marshall, MN 56258

Martha S. Hogerty
Missouri PSC
Truman State Office Bldg.
P.O. Box 360
Jefferson City, MO 65102

Jonathan D. Blake
Covington and Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, DC 20044

Larry W. Dority
Missouri Telephone Association
P.O. Box 785
Jefferson City, MO 65102

John Hesselman
Mondovi Telephone Company
217 South Eau Claire Street
Mondovi, WI 54755

Patrick A. Lee
NYNEX Telephone Companies
120 Bloomingdale Road
White Plains, NY 10605

Paula W. Gold
Massachusetts Executive Office
of Consumer Affairs
One Ashburton Place
Suite 1411
Boston, MA 02108

David Cosson
National Telephone
Cooperative Association
2626 Pennsylvania Ave., N.W.
Washington, DC 20037

Rosalind A Niles
Massachusetts Community
Antenna Television Commission
100 Cambridge Street
Suite 2003
Boston, MA 02202

H. Bartow Farr, III
Richard G. Taranto
Klein, Farr, Smith & Taranto
National Cable Television Ass.
2445 M St., N.W., Ste. 225
Washington, DC 20037

Gigi B. Sohn
Andrew J. Schwartzman
Media Access Project
2000 M Street, N.W.
Washington, DC 20036

Norman A. Osland
Nebraska Telephone Association
635 South 14th
Suite 300
Lincoln, NE 68508

Penny Rubin
New York State
Department of PS
Three Empire State Plaza
Albany, NY 12223

Paul Cianelli
Thomas K. Steel
New England Cable Television
Association
100 Grandview Road, Suite 201
Braintree, MA 02184

Cynthia M. Pols
National League of Cities
1301 Pennsylvania Ave., N.W.
Washington, DC 20004

Margaret M. Foti
New Jersey Board of
Public Utilities
Two Gateway Center
Newark, NJ 07102

John W. Cowrin
Mary Hilgeman
Bureau of Consumer Frauds
and Protection
Energy and Utilities Section
New York, NY 10271

Martha Malkin Zornow
National Association of
Public Television
1350 Connecticut Ave., N.W.
Suite 200
Washington, DC 20036

Nicholas P. Miller
Miller, Young and Holbrooke
1225 19th Street, N.W.
Washington, DC 20036

Paul Rodgers
Charles D. Gray
NARUC
1102 ICC Building
P.O. Box 684
Washington, DC 20044

John L. Grow
New York State Commission
on Cable Television
Three Empire State Plaza
Tower Bldg.
21st Floor
Albany, NY 12223

Wade H. Hargrove
Randall M. Roden
Tharrington, Smith and
Hartgrove
209 Fayetteville Street Mall
P.O. Box 1151
Raleigh, NC 27602

Henry L. Baumann
National Association
of Broadcasters
1771 N. Street, N.W.
Washington, DC 20036

Maxine R. Davison
Ogden Telephone Company
21 West Avenue
Spencerport, NY 14559

John R. O'Hanlon
O'Hanlon Law Offices
1569 Washington
P.O. Box 428
Blair, NE 68008

Anthony J. Celebreeze, Jr.
PUC of Ohio
120 East Broad Street
Columbus, OH 43266-0573

Anthony L. Pharr
Office of Communications
United Church of Christ
2000 M Street, N.W.
Suite 400
Washington, DC 20036

R.C. Brown, III
Peebles Telephone Company
Perco Telephone Company
and Sugarland Telephone
Company
P.O. Box 650
Sugarland, TX 77487

E. G. Fitzgerald, Jr.
People Mutual Telephone
Company, Inc.
P.O. Box 367
Gretna, VA 24557

Rex Bryan
Pinnacles Telephone Co.
340 Live Oak Road
Paicines, CA 95043

Paul Klein
419 Park Avenue South
New York, NY 10016

James P. Tuthill
Pacific/Nevada Bell
140 New Montgomery Street
Room 1523
San Francisco, CA 94105

Robert B. McKenna
Lawrence E. Sarjent
U S West, Inc.
1020 19th Street, N.W., Suite 700
Washington, DC 20036

Stanley J. Moore
Pacific/Nevada Bell
1275 Pennsylvania Ave., N.W.
Washington, DC 20004

Josephine S. Trubekf
Rochester Telephone Center
180 South Clinton Avenue
Rochester, NY 14646-0700

Marvin A. Sirbu
Baker Hall 128 B
Carnegie Mellon University
Pittsburgh, PA 15213

Robert J. Butler
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

Philip L. Verveer
Willkie, Farr and Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, DC 20036-3302

Jay C. Keithley
United Telecommunications, Inc.
1850 M Street, N.W.
11th Floor
Washington, DC 20006

Margot Smiley Humphrey
Charles R. Naftalin
Koteen and Naftalin
1150 Connecticut Ave., N.W.
Washington, DC 20036

Robert A. Beizer
Schnader, Harris, Segal
and Lewis
111 19th Street, N.W., Ste. 1000
Washington, DC 20036

Robert C. Atkinson
Teleport I
One Teleport Drive
Staten Island, NY 10311

James C. Rice
VectorTech, Inc.
1504 Edgehill
Madison, WI 53705

Martin T. McCue
U.S. Telephone Association
900 19th Street, N.W.
Suite 800
Washington, DC 20006-2105

Jerome Graff
Valley Teleco Cooperative
P.O. Box 7
Herreid, SD 57632

Don Grigg
Western Iowa Telephone
Association
P.O. Box 38
Lawton, IA 51030

Mr. Thompson T. Rawls
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 West Peachtree St., N.E.
Atlanta, GA 30375

Daniel L. Brenner
Neal M. Goldberg
David L. Nicoll
National Cable Television
Association, Inc.
1724 Massachusetts Ave., N.W.
Washington, DC 20036

Peter Arth, Jr.
Edward W. O'Neill
Mark Fogelman
The People of the State of
California and The PUC
505 Van Ness Avenue
San Francisco, CA 94102

Michael E. Glover
Besty L. Anderson
Bell Atlantic Telephone Companies
1320 N. Court House Road
Arlington, VA 22201

Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W. Rm. 614
Washington, DC 20554

Robert B. Nicholson
Robert J. Wiggins
Appellate Section
Antitrust Division
U.S. Department of Justice
10th St. & Constitution Ave., N.W.
Room 3224
Washington, DC 20530

John Gibson Mullan
Kirkland & Ellis
Mankato Citizens Telephone Company, Yelm
Telephone Company, Huntel Systems, United
States Telephone Association
655 Fifteenth Street, N.W., Ste. 1200
Washington, DC 20005

David Rolka
Maureen A. Scott
Veronica A. Smith
John F. Povilaitis
The Pennsylvania Public Commission
Room 104
POB 3265
Harrisburg, PA 17105